MAJLIS PEGUAM MALAYSIA v. YAP MIN CH'NG

HIGH COURT MALAYA, KUALA LUMPUR
ZALEHA YUSOF J
[PETITION FOR ADMISSION NO: 18-71458-11-2012]
12 AUGUST 2014

LEGAL PROFESSION: *Admission – Objection – Petition to be admitted and enrolled as Advocate and Solicitor of High Court of Malaya – Objection by Bar Council – Allegation that petitioner was under police investigation – Petitioner suspected of cheating by personation – Offence under s. 416 of Penal Code – Whether there was concrete evidence of petitioner's bad character – Legal Professions Act 1976, ss. 11(1)(b), 16 & 17*

The petitioner filed a petition to be admitted and enrolled as an Advocate and Solicitor of the High Court of Malaya. Section 11(1)(b) of the Legal Professions Act 1976 ('the Act') provides, *inter alia*, that a qualified person may be admitted as an Advocate and Solicitor if he is of good character. Pursuant to ss. 16 and 17 of the Act, the Bar Council filed a notice to enter caveat and a notice of objection, on the ground that the petitioner was not of good character as he was under police investigation after being suspected of committing an offence of cheating by personation under s. 416 of the Penal Code. The said offence allegedly took place when the petitioner was said to have sat for the main exam for the Certificate in Legal Practice ('CLP') on behalf of one Jerry Hong. The issue that arose in this application by the Bar Council was whether the petitioner was of good character.

Held (dismissing application):

(1) The court could not act on mere suspicions. There was no concrete evidence of the petitioner's bad character. The petitioner was not even charged, still less being found guilty by a court of law. There was nothing to show that he was actually the one who committed the said offence. The Bar Council merely tendered a police report and an affidavit which averred that the petitioner had committed an offence of cheating by personation. One year had passed and there was no evidence that he would be prosecuted. (paras 5, 7, 10 & 11)

Case(s) referred to:
Loh Shak Mow v. PP & Wong Hoi Ping, Alan v. PP [1986] 1 LNS 47 HC ***(refd)***
R v. Braithwaite [2010] EWCA Crim 1082 ***(refd)***
Re Alan Wong Hoi Ping [1988] 1 LNS 55 HC ***(refd)***
Re B Surinder Singh Kanda [1964] 1 LNS 163 HC ***(refd)***

Legislation referred to:
Legal Profession Act 1976, ss. 11(1)(b), 17, 16
Penal Code, ss. 416, 419

A *For the appellant - Hoi Jack S'ng; M/s Lee Hishamuddin Allen & Gledhill*
For the respondent - Amos Ho Chern Wey; M/s Paul Ong & Assocs

Reported by Najib Tamby

B **JUDGMENT**

Zaleha Yusof J:

[1] The petitioner had filed a petition dated 30 October 2012 to be admitted and enrolled as an advocate and solicitor of the High Court of Malaya. However, the Bar Council had filed a notice to enter caveat affirmed C on 3 December 2013 and a notice of objection affirmed on 9 May 2014, pursuant to ss. 17 and 16 of the Legal Profession Act 1976 (Act 166) on the following grounds:

(a) The petitioner is suspected of having committed an offence of cheating by personation under s. 416 of the Penal Code, which is punishable D under s. 419 of the Penal Code; and

(b) The suspected offence is currently being investigated by the police.

[2] The issue here is whether the petitioner is of good character as s. 11(1)(b) of Act 166 *inter alia* provides that a qualified person may be E admitted as an advocate and solicitor if he is of good character; and it is the Bar Council's contention, in this application, that the petitioner is not of good character.

[3] The Bar Council had come to that conclusion based on a police report lodged on 6 August 2013 by Puan Aliza Sulaiman, the then Director of the F Certificate in Legal Practice Examination, Legal Profession Qualifying Board in relation to an offence of cheating by personation which was believed to have occurred during main examination for the Certificate in Legal Practice (CLP) held at the Examination Building, University Malaya on 3, 5, 8 and 10 July 2013. The petitioner is suspected of having sat in the said G main examination on behalf of one Jerry Hong.

[4] Both parties had cited the case of *Re Alan Wong Hoi Ping* [1988] 1 LNS 55; [1988] 3 MLJ 25, a decision of the Brunei High Court. In *Re Alan Wong Hoi Ping (supra)*, Alan Wong petitioned to be admitted as an advocate and solicitor in Brunei, the Attorney General objected to his admission based on H the fact that he was convicted by a Singaporean court for criminal offences, the Attorney General produced a law report in a case named *Loh Shak Mow v. PP & Wong Hoi Ping, Alan v. PP* [1986] 1 LNS 47 that showed that Alan Wong was charged and convicted on three criminal charges but those convictions were later quashed on appeal. Upon examining the evidence

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tendered by the Attorney General (the said law report) and the three certificates of good character filed by Alan Wong in support of his admission, the learned judge made the following observation:

> As to (1), [whether Alan Wong is of "good character], I must first consider what in its context the expression 'of good character' means. What is a man's character"? It may be his disposition, what he in fact is; or it may be his reputation, what other people think he is: see, for example, *Plato Films Ltd v Speidel* [1961] AC 1090 especially the speech of Lord Denning at pp 1137 and 1138. For the purposes of the qualification (b) in s 4, in my judgment, it means both his disposition and reputation, so that if the petitioner appears, from the evidence on the petition, either to lack the qualities of integrity, honesty and the like which an advocate and solicitor ought to possess, or to have a bad reputation in these respects, he will be shown to want that 'good character' which he needs in order to satisfy the qualification
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> The certificates of good character are, on the face of them, evidence of the good character of the petitioner; that, indeed, is why they are required. But they cannot be conclusive. Is there anything to displace them? In particular, am I bound, or even entitled, to hold, on the basis only of the law report of *Loh*'s case, that Mr. Wong is not of "good character" In my judgment, I am not. At common law, even a conviction of a criminal offence is regarded as no more than the expression of the opinion of the tribunal as to the quilt of the accused: See *Hollington v. Hewthorn*. And a discharge is not even that, though the discharge be on a technical rather substantive grounds.
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> ... Since there is nothing else, apart from the report, which the Attorney General urges against Mr Wong's 'good character', I do not think that I am entitled to hold that Mr Wong has 'failed to show that he is of good character'.

[5] From the above passages, it is clear that it must be shown from the evidence on the petition that the petitioner is not of good character. However, as submitted by the petitioner, the Bar Council has failed to do so as what the Bar Council has done is merely tendering a police report by Puan Aliza Sulaiman alleging that petitioner has committed an offence of cheating by personation; and filing an affidavit affirmed by one Chen Yun Jin which averred that the petitioner was suspected to have committed an offence of cheating by personation.

[6] On the fact that a police report was lodged, the English Court of Appeal case of *R v. Braithwaite* [2010] EWCA Crim 1082 had held that a police report alone is no evidence at all and ought not to be considered, per Lord Justice Hughes:

> A defendant who asks to adduce a CRIS report to the police containing a complaint made in the past to the police by someone else was not prepared to support it, is advancing a very different level of probative

A value. First, it is, at best, hearsay. Its admission would fall to be judged by reference to the conditions for the admission of hearsay and we venture to suggest that given the difficulties of the jury in assessing such evidence it would be rare for it to be judged to be of substantial probative value. Secondly, if the complainant has failed to support the allegation, that robs it of a great deal of probative value. If, in addition, there has
B been a decision by the police or CPS not to pursue the allegation or even, as in one instance in the present case, the formal acceptance of a verdict of "not guilty", the probative value is even further reduced … The "evidence" in this case was in truth no evidence at all that the witnesses had committed the offences in question. It might be different if hard evidence of the allegation were to become available and if that is what
C the applicant were to seek to adduce. Accordingly we have no doubt that the Judge was right to direct himself that a mere police report indicating that an allegation had been made, which remained unproven, was most unlikely to have substantial probative value.

[7] It must be emphasised that the petitioner was not even charged still
D less being found guilty by a court of law. In *Re B Surinder Singh Kanda* [1964] 1 LNS 163; [1964] 30 MLJ 135 the petitioner's petition for admission was objected by the Bar Council and State Bar Committee based on a suit brought by the petitioner against the Government of Malaya for a declaration that the petitioner's dismissal from the police force was void, the suit emanated from
E the findings of the Police Board of Inquiry which led to the eventual dismissal of the petitioner which found that, *inter alia*, the petitioner was "... the villain of the piece" and the Board was forced to the conclusion that Inspector Kanda is a very ambitious and a thoroughly unscrupulous officer who is prepared to go to any lengths, including the fabrication of false
F evidence, to add to his reputation as a successful investigator".

[8] It is worth nothing that in rejecting the objectors' objection, the court in *Re B Surinder Singh*'s case (*supra*), apart from ruling that the petitioner was not accorded with procedural safeguards to answer against his disciplinary charges, directed its mind on the fact that:

G There is also the further matter arising out of the report of this Board of inquiry and that is that although the finding of the board was that the petitioner had committed the criminal offence of fabricating false evidence he was never at any time prosecuted for. any offence in connection with the matter. [Per Hepworth J at Pg. 137]

H **[9]** Based on the foregoing grounds, the learned judge in that case dismissed the objection and made the following observation:

if everything that had happened in the way it happened did not justify the proper dismissing the petitioner from the police force because they had not properly proved their case, how can it be said that nevertheless on the
I same grounds for the same reasons I am now justified in dismissing this petition?

[10] Although I agree with the Bar Council that being the managing body of the Malaysian Bar, it carries out the object and powers of the Malaysian Bar as stipulated under Act 166, that the object and powers of the Malaysia Bar include, amongst others, the maintaining of the standards of conduct of the legal profession, the promotion of the interests of the legal profession and the protection of the public in all matters related to the law. However it must also be borne in mind that the Bar Council cannot act on mere suspicious. There must be concrete evidence before a person is accused of bad character. I am of the view that there is no concrete evidence of the petitioner's bad character established by the fact in the Bar Council's objection.

[11] To conclude, after perusing the cause papers and submissions of the parties, written as well as oral, I am of the view that as it is, there is nothing to show that he was actually the one who committed the offence. One year had passed and no evidence that he would be prosecuted. I do not think that this court can act on mere suspicious. As it is, I agree with the petitioner, there is no evidence of his bad character. If in future it can be proven, of course Bar Council can take action against him.

[12] I therefore disallow encl. 16 with no order as to cost.